IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

R.S.A.No. 1150 of 2007

DATE OF DECISION: APRIL 18, 2007

Sarupa

...APPELLANT

VERSUS

Maha Singh

...RESPONDENT

CORAM: HON'BLE MR.JUSTICE SATISH KUMAR MITTAL

Present: Mr.Som Nath Saini, Advocate,
for the appellant.

...

This is defendant's Regular Second Appeal against the judgment of reversal. The suit filed by the plaintiff for declaration that he is owner in possession of the disputed land and for permanent injunction restraining the defendant from dispossessing the plaintiff from the suit land, was dismissed by the trial court. However, on appeal, the judgment and decree of the trial court was set aside and the suit of the plaintiff has been decreed.

I have heard the counsel for the appellant and gone through the judgments and decrees passed by both the Courts below.

In this case, the appellant was owner of Khasra No.666 measuring 3 kanals 13 marlas situated in village Hatt. He sold one kanal of land from the said khasra number to the plaintiff-respondent vide registered sale deed dated 4.2.1974 for consideration. Vide this sale deed, a specific portion of the aforesaid khasra number was sold to the plaintiff by the appellant. The possession of that portion was also given to the plaintiff. Thereafter, he raised construction on the said land. Subsequently, the plaintiff came to know that the defendant has got a separate number carved out known as 666/2/1 in which plaintiff has been shown as owner in possession of 15 Marlas of land, whereas he had purchased one kanal (20

Marlas) of land from the defendant. When on the basis of the said wrong entry in the revenue record, the appellant threatened to dispossess the plaintiff from the suit property forcibly, he filed the instant suit.

The trial court on the basis of the evidence led by the parties and while taking into consideration the sale deed (Ex.PW4/A), mutation No.3062 (Ex.P2), jamabandi for the year 1994-95 (Ex.P5), certificate of Panchayat (Ex.PW6/A) and other documents available on the record, held that the plaintiff is owner in possession of the suit land measuring one kanal. It has also been found that immediately after purchase of the land, he has raised construction on the said land. In spite of recording of the said finding on issues No.1 and 2, the trial court dismissed the suit of the plaintiff on the ground that his suit was not maintainable, being bad for non-joinder and mis-joinder of necessary parties and also barred by limitation.

The first Appellate Court has affirmed the finding of the trial court on issues No.1 and 2 and has held that the plaintiff is owner in possession of the land measuring one kanal of land which he had purchased vide registered sale deed dated 4.2.1974 from the appellant from his khasra No.666. After confirming the said finding, the Appellate Court came to the conclusion that the suit filed by the plaintiff is maintainable and the same is not barred by limitation because he filed the present suit when his possession was threatened by the appellant. It has been held that immediately after purchase of the land, the mutation (Ex.P4) was sanctioned in favour of the plaintiff qua the land measuring one kanal out of khasra No.666. Therefore, Tatima was also prepared. Prior to that, out of khasra No.666, 5 marlas of land was acquired by the State Government for construction of the road. Mutation in that respect was also sanctioned. After deducting 5 marlas of land, the mutation regarding 1 kanal 18 marlas of land was sanctioned in favour of the defendant, as is clear from the jamabandi for the year 1994-95. It has also been found that as far as the land measuring 5 marlas was concerned, which was acquired by the State Government, the same belonged to the appellant and the plaintiff 's land was not acquired nor he has received any compensation. Since the plaintiff was found owner in possession of land which was also got demarcated by him, the first Appellate Court held that the suit filed by the plaintiff for declaration as well as for permanent injunction is maintainable, which was filed within

limitation.

Counsel for the appellant could not controvert the findings recorded by both the Courts below on issues No.1 and 2. He only submitted that the suit of the plaintiff was not maintainable and was barred by limitation. In my opinion, the Appellate Court has rightly come to the conclusion that once the plaintiff was found owner in possession of the suit land, he was entitled to maintain the instant suit for declaration as well as permanent injunction. The cause of action to the plaintiff arose when his lawful ownership and possession was threatened by the defendant. The instant suit was filed within the prescribed period of limitation from the said cause of action. Thus, I do not find any illegality or infirmity in the impugned judgment passed by the first Appellate Court.

No substantial question of law has been raised or is involved in this appeal.

Dismissed.

April 18, 2007 (SATISH KUMAR MITTAL)
vkg JUDGE